IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	**CRIMINAL**
	:	
v.	:	
	:	**NO. 16-365**
YOUNES KABBAJ	:	

KEARNEY, J. **September 12, 2016**

FINDINGS OF FACT AND STATEMENT OF REASONS
TO DETAIN DEFENDANT PENDING TRIAL

After evaluating the United States' proffer and exhibits and the *pro se* Defendant's extensive proffer, two witnesses and an exhibit, we find facts and issue a written statement of reasons under 18 U.S.C. § 3142(i) supporting our accompanying order denying Defendant's motion for pretrial release and granting United States' motion for detention. We do not find Mr. Kabbaj is likely to flee or not appear for his October 17, 2016 trial. But we find we must detain him pending trial because his repeated emails and filings specifically warn of his role in: death and decapitation upon his enemies; possibly triggering terrorism to make "911 [September 11, 2001] look like a picnic in the park"; an intent to incite "massive violence against the entire homosexual community"; taking steps to ensure "the global holocaust of the entire assembled homosexual community"; and, because he cannot decapitate a female, calling upon the "Muslim women" and "female hackers" to "take care of" of a United States Magistrate Judge to "avenge" him for her rulings on a civil case she settled for him with a large payment in the District of Delaware but then later refused to hear other cases because she lacked personal jurisdiction over New York defendants related to his settlement.

At trial, Mr. Kabbaj will defend his statements based on lack on intent, duress, coercion, necessity (of making retaliatory threats) and entrapment. He will claim these statements are the way he, and his enemies, communicate. He may be accurate and persuade a jury to find the United States did not prove his intent to threaten a federal judge beyond a reasonable doubt. As mindful as we are of a citizen's right to pretrial liberty when warranted[1], evaluating Mr. Kabbaj's proffer and witness credibility over hours of detention hearings does not allow us to overlook the real danger from his emails or characterize them as frivolous. He makes these descriptive promises in emails sent both to his "enemies" and in filings with the Supreme Court and District Judges. We find he poses too great a danger to certain persons and the community-at-large. Given his perceived ability to call on others to harm judges, we cannot craft conditions on release which would preclude further risk of danger.

I. Findings of fact.

1. Defendant Younes Kabbaj ("Mr. Kabbaj"), once holding Moroccan and American citizenship, interprets his Islamic religion as strictly prohibiting homosexuality. He genuinely believes his former school and employer, the American School of Tangiers ("AST"), is conspiring with its leadership to harm him. According to Mr. Kabbaj, the AST's leadership[2] is comprised of "the hierarchy of the global LGBTQIA+[3] religion."

2. Mr. Kabbaj believes the United States government and the AST are effectively one and the same. Mr. Kabbaj's repeated filings and emails manifest his belief some of the American court system is involved in his AST conspiracy. Mr. Kabbaj goes as far to say this case is "predetermined against [him]." We have repeatedly assured him we have not predetermined this case and, should he decide to proceed to a jury, a jury will decide whether he is guilty.

3. Mr. Kabbaj asserts a former AST headmaster attempted to molest him when he was a 12 year old student at the AST. Mr. Kabbaj claims he then blew the whistle on this now deceased homosexual headmaster which, along with his Islamic beliefs, began the conspiracy against him.

4. Mr. Kabbaj describes the means of this conspiracy as a cycle of "malicious" prosecution. The cycle begins with defamation upon Mr. Kabbaj, which inexplicably leads him to retaliate with "threats" against the AST and those he views to be AST "agents." The cycle ends with the AST bringing criminal or civil prosecution against Mr. Kabbaj. Mr. Kabbaj then successfully defends all charges.[4]

Background before Mr. Kabbaj's charged 2016 conduct.

5. Mr. Kabbaj enjoyed dual citizenship in Morocco and the United States, although he testified to having now renounced his Moroccan citizenship. He lives with his mother in Sunrise, Florida.

6. His father knew the former King of Morocco. He claims he has family members in high ranking positions in the Morocco army. He claims to be engaged and has no children.

7. Mr. Kabbaj describes himself as a "computer expert" and is skilled in information technology.[5] He taught at the AST in Morocco several years ago until being terminated. He then briefly worked at the Nurlal Islam Academy in 2010 and 2011. He has not worked since but his mother in Florida and his brother in Texas assist him financially and appear in court to assist him.

8. Mr. Kabbaj is presently unemployed and has no contacts in the Eastern District of Pennsylvania. He consented to venue in this District and having me preside over this case.

9. Mr. Kabbaj has traveled outside the United States several times and lived in

Morocco. Mr. Kabbaj surrendered his passport upon his March 2016 arrest.

10. Mr. Kabbaj has a 1997 felony conviction for conspiracy to distribute heroin in New York. This is his only criminal conviction. Mr. Kabbaj claims the judge granted him pretrial release on his personal recognizance and $150,000 bail for this felony charge. He returned to Florida and his mother and brother ensured his appearance at the trial in New York.

11. A medical professional diagnosed Mr. Kabbaj with schizophrenia in or around 2001-2003. Mr. Kabbaj claims the medical professional erred in the diagnosis.

12. No one disputes the September 11, 2001 attacks resulting in the loss of thousands of American lives in New York, the Pentagon and Shanksville greatly affected Mr. Kabbaj.

13. Mr. Kabbaj allegedly knows confidential information concerning terrorism efforts and issues on the New York "Mafia". He believes he possesses confidential information which could prevent an upcoming terror event but the United States will not believe him. Mr. Kabbaj strongly believes the United States is retaliating against him at the AST's urging because he possesses confidential information about terrorism and the Mafia.

14. His brother credibly testified concerning Mr. Kabbaj's background and would not describe him as having issues with mental stability or paranoia. His brother contradicted the assigned Special Agent's recall of an unrecorded March 2016 interview concerning Mr. Kabbaj's mental state or paranoia.

15. His brother, apparently a successful health care professional, offered to provide his Texas home as security for an appearance bond and to personally ensure his brother's compliance with any terms of pretrial supervision in his Texas home and timely appearance at our October 17, 2016 trial.

16. For reasons beyond our personal experience, and without expert testimony to rely

upon, we cannot discern why the United States' decisions as to his credibility on these alleged terrorism issues anger Mr. Kabbaj to such an extensive degree.

17. While we cannot evaluate the veracity of Mr. Kabbaj's confidential information, we agree with Magistrate Judge Lloret's August 2, 2016 finding as to Mr. Kabbaj's competence. He presents a cogent argument. We do not dismiss his theory simply because it seems implausible to us at this pre-trial stage. The issue is not whether Mr. Kabbaj is correct in his predictions based on alleged confidential information, but whether he takes his anger too far by physically threatening federal officials under 18 U.S.C. § 115(a)(1)(b) & (b).

18. Mr. Kabbaj's next brush with police occurred when police in his hometown of Sunrise, Florida arrested him in 2005 based on a neighbor's criminal complaint of trespassing and battery-touch or strike. He successfully defended the charges in 2006. Mr. Kabbaj asserts this arrest arises from a United States informant neighbor calling the local police and having him falsely arrested.

19. Mr. Kabbaj claims he only left the United States in 2007 because the Federal Bureau of Investigation (FBI) "chased him out of the country to Morocco by threatening violence against him."[6] The federal authorities allegedly "followed him to Morocco to engage further sabotage against him from 2007-2009, which caused [Mr. Kabbaj] to return to America in 2010 to try and use the American legal system to restrain them." [7]

Mr. Kabbaj and the AST litigate the cross-threats.

20. In 2010, Mr. Kabbaj sued his AST "enemies" in AST's Delaware state of incorporation, including an allegedly homosexual male in AST's leadership, for defaming him by calling him a heroin dealer and harming his present and prospective employment and contractual relationships.

21. After some back and forth, Chief United States Magistrate Judge Mary Pat Thynge settled the disputed claims in 2012 through, among other things, payment of over $100,000 to Mr. Kabbaj and mutual agreements not to disparage each other or initiate criminal or civil proceedings against each other. Mr. Kabbaj thought he was buying final peace. He specifically cites a conversation during settlement negotiations with Judge Thynge where he claims she confirmed the agreement would stop the AST from defaming him and she would retain jurisdiction of any breach of the settlement agreement.

22. Mr. Kabbaj believes a 2012 settlement agreement between him and the AST is a prospective bar against criminal prosecutions by the AST, and *ipso facto*, the United States government.

23. After reaching agreement and getting paid, Mr. Kabbaj learned of allegedly ongoing defamatory comments on the internet generated from a series of unknown "John Doe" IP addresses allegedly connected with the AST leadership including the homosexual male and his partner. Mr. Kabbaj contacted his AST enemies, including the homosexual male and his partner, to direct them to cease and desist. As New York citizens, the individuals filed suit in New York against Mr. Kabbaj for harassment.

24. Mr. Kabbaj then sought redress in the District of Delaware essentially attempting to enforce his settlement agreement against unknown IP addresses which he believes are controlled by the homosexual male and his partner in New York.

25. Magistrate Judge Thynge again reviewed the claim. She would not allow the matter to proceed as it related only to New York citizens over whom she found a lack of personal jurisdiction.

26. Rather than retain competent federal counsel to untangle his jurisdictional issues,

Mr. Kabbaj continued to file serial motions in both the Delaware and New York civil cases to make his case. He apparently became increasingly frustrated with the decisions from the district courts. He appealed a variety of decisions to the Court of Appeals.

27. While he continued to battle in the federal courts, he claimed his adversaries continued to "threaten" his and his family's lives through several writings.

28. The case Special Agent confirmed the United States has been aware of these reciprocal threats involving Mr. Kabbaj for several years.

29. During the course of his motions in the civil cases, Supreme Court Justice Antonin Scalia died unexpectedly on February 13, 2016. Mr. Kabbaj believes someone assassinated Justice Scalia because the Justice intended to support his alleged oral personal request for Justice Scalia's review and potential reversal of the Court's homosexual rights precedents.

Mr. Kabbaj's charged 2016 conduct.

30. Five days after Justice Scalia's passing, Mr. Kabbaj admittedly sent a February 18, 2016 e-mail in response to threats to him from the AST parties. This time he also addressed his response to Chief Magistrate Judge Thynge of the District of Delaware;[8] attorney Larry Seegull, Edward Gabriel, an AST Board Member and former United States Ambassador to Morocco; and, Yahya Rouach, an AST Board Member.[9]

31. This criminal charge arises entirely from words admittedly written by Mr. Kabbaj:

a. "I am required . . . to engage infiltration of your computers to now obtain your personal files, etc[.], and to try an obtain return of my money . . . as I will be withdrawing those funds from your bank accounts directly to resolve the financial issues created by your crimes. . . . Thus my goal is to financially ruin anyone who

attempted to do the same to me. . . ."

b. "[M]y peeps have informed me that they were able to hack the NYPD, [the] Manhattan DA, Jackson Lewis and the Courts (and other things) . . . I am now going to hack the hell out of all of you people . . . I hope to also expel these corrupt attorneys from the Jackson Lewis franchise after I leak some of their internal litigation databases to the public."

c. "So I am sending you this email to inform you of what I intend to do to resolve this matter and achieve equality . . . . Although clearly I will not tell you when/how I will accomplish these things which I affirm I will engage against you people, I still honor my Islamic obligation to fully inform you as to exactly what you should expect before I do it because I am religiously affirmative of the notion of a fair fight in that you should always warn your opponent of the consequences of their illegal aggression before you engage them."

d. "I spent a few months in New York trying to . . . catch Mark Simpson/Brian Albro[10] to try to put at least one of them in the hospital . . . and it is clear that Detective Egan [of the New York Police Department] will not fight me a fair one [sic] and will instead seek to shoot me if I attempt to engage a fist fight with him, which will then escalate the situation into a massive terrorist attack that will make 911 look like a picnic at the park."

e. "Since my religion forbids me to attack/harm a woman, unfortunately I cannot threaten to decapitate [Judge] Mary Pat Thynge for her attempt to recruit 'agents' in New York to murder me, so I will leave that to the Muslim women to deal with as they will avenge for me what she did."

f. "[Y]our settlement was part of a scam to attempt yet another assassination of me via your 'agents' in the law enforcement and courts."

g. "I must veto Magistrate Judge Thynge and still place one of you in the hospital. So yes, you guys can go ahead and start to walk around with guns if you want, but again, if you attempt to draw it [sic] you will end up dead anyway. . . . No matter what, a hospital visit for anyone that participated in that plot to engage an assault against me in New York, so all you guys are included in that in any situation whereby Simpson/Albro refuse to step up and have instead fled. . . ."

h. "Thus there is the physical component to this matter which unfortunately must be engaged so that it can be posted on Youtube for the world to see and so that other homosexual terrorists will be properly warned about attempting to scam the Muslims . . . ."

i. "I stopped using KRONOS ports to go after my enemies after the last time when I killed Duke in New York using a KRONOS port back in the 1990's, so when I took care of McPhillips [former AST headmaster] in 2007, I had to use my bare hands . . . . I would prefer to use my last two KRONOS ports on DJ and his boy so that I can attempt to force conversion of their remaining ports onto Obama."

j. "I still intend to use my last KRONOS ports to at least be able to incite massive violence against the entire homosexual community. . . ."

k. "[I]t appears that this matter was a scam engaged directly by the King of Morocco via Edward Gabriel."

l. "Edward Gabriel, Larry Seegull and Yahya Rouach are at the top of the list for a trip to the hospital unless Desmond Egan/Simpson/Albro setp up and agrees to

> fight me directly. As for Thynge, I will have my femal hacker squad to investigate her and decide what the proper punishment is for a female judge that attempts to murder an innocent person because of some unresolved sexual issues (whatever they are). I will leave it up to the Islamic females to thereby deal with the atheist females which have targeted me in this illegal way because I intend to focus my efforts on the males which I deem to be much more dangerous because of their intelligence . . . ."

32. Mr. Kabbaj admits sending the February 18, 2016 email. He claims he sent "hundreds" of similar emails and letters. We are not aware of any earlier email sent to, or concerning, a federal judge other than the February 18, 2016 email.

33. Given his enemies repeatedly defaming him, Mr. Kabbaj views his statements as justified and necessary. Mr. Kabbaj claims a foreign government forced him to send this February 18, 2016 email as part of Mr. Kabbaj's "continued attempts to extract himself and his family from the overarching dispute, which is in fact a dispute between the US and Moroccan governments based upon Morocco's refusal to legalize homosexuality." [11] Mr. Kabbaj intended his email "solely for counter-propaganda purposes to combat the false propaganda being directed against [him] and the entire Moroccan people by the LGBT religious sect that is represented by persons identified in the [February 18, 2016] email."[12]

34. On February 26, 2016, the United States District Court for the District of Delaware issued a warrant to arrest Mr. Kabbaj.

35. On February 29, 2016, Mr. Kabbaj filed a writ of *certiorari* with the Supreme Court, representing:

a. "[I] made contact with the Honorable Antonin Scalia approximately 24 hours

before he was assassinated, where he agreed to make sure that [my] Writ of Certiorari is taken up by the Supreme Court . . . . Prior to the assassination of Antonin Scalia the petitioner was guaranteed a 9-0 decision in his favor regarding this Writ. . . . [A]t least 5 Jurists on this Court engaged a religious 'fatwa' on June 26th, 2015 (gay 'marriage' ruling) that authorized the homosexual religious authorities (and their 11 liens [sic]) to thereby assassinate one of their own colleagues for merely agreeing to ensure the case is reviewed . . . ."

b. "[My] brief is being rushed because it needs to be filed immediately in order to satisfy an ongoing terrorism schedule which has been provided to him by the now merged ISIS/Al-Qaeda organization . . . [I am] forced to file this brief immediately upon threat of a terrorist attack being committed if [I] do not do so . . . ."

c. "[I am] left with no other choice but to defend [myself] directly from this ongoing threat without any assistance form police . . . [I] also wish[] to inform the Supreme Court that the actions of [AST] mandate that [I] take direct steps to terminate this illegal conspiracy with extreme prejudice, such steps assured to result in the global holocaust of the entire assembled homosexual community."

d. "[My] extended family [] is still trapped in Morocco and being held as human hostages by the Delaware Court . . . ."

e. "[I] come[] from a very powerful military family in Morocco which is capable of obtaining removal of the King through acts of violence, such as espionage-related activities engaged by the [AST] against [] [me] and [my] family are tantamount to them yelling 'bomb' in a crowded theater for the specific purpose of provoking

violent terrorism to occur between [] [my] military family and the King of Morocco (and other associated factions). A sampling of this violence already occurred as a result of a prior breach of an attempted settlement agreement with the [AST] in 2011 . . . which thereby led to a bombing which occurred in Marrakesh, Morocco in April of 2011. . . [the AST] being fully informed that their prior breach already caused a terrorist bombing to be orchestrated by competing factions of the Moroccan Military."

f. "The only reason [the] [] assassination [of me by the AST] has not yet taken place is because [] [I] [have] affirmed to them that massive retaliation by the entire global Judaic/Christian/Islamic populations against the Homosexual population is assured via [my] ability to put into place various countermeasures to defeat [an] assassination should it be attempted (unlike Antonin Scalia, who unfortunately could not also obtain access to those protective countermeasures because they are specific to the Islamic religion's global defense mechanism and thus non-transferable to any person who does not officially and publically adopt Islam as their religion)."

g. "[My] faction [of the 'various religious factions in the Middle East'] is known as the Hashashin, which are commonly misidentified as the 'Shiite' branch of Islam (which itself does not actually exist except as an offshoot 'cover story' to protect the Hashashim [sic] from the illegal conspiracy being waged against them by the [AST] since time immemorial). Thus the entire massive war in Syria and all other facets of the struggle between the Sunni and Shiite factions of Islam in the Middle East are being directly influenced by the [AST]'s attempts to upset the balance of

power in that entire region by encouraging [me] (the leader of the Hashashin) to authorize the assassination of the King of Morocco in order to prevent any further Sunni aggression against the remaining Shiite population."

36. On March 1, 2016, Mr. Kabbaj wrote to Judge Laura T. Swain of the United States District Court for the Southern District of New York then presiding over the New York component of his renewed dispute with the AST:

a. "[T]his racist, atheist homosexualized [sic] court would like to engage [a 'falsified jail sentence'] against [me] . . . ."

b. "Judge Swain is clearly desirous to attempt [to arrest me] in order to give Obama additional opportunities to prevent Plaintiff from being allowed to travel to [the] Middle East because he is running out of options to prevent [the next terrorist attack] and he must now rely on Judge Swain to make sure that the next terrorist attack is not prevented by [me]."

c. "No judge can restrain [my] communications if they are defensive in nature because the Court is doing nothing to defend [me] and is instead looking for ways to murder [me]."

37. On March 8, 2016, the Secret Service arrested Mr. Kabbaj in the District of Columbia on the warrant issued from Delaware. The authorities found Mr. Kabbaj shortly after he left the Saudi Arabian embassy in Washington, D.C. where he hoped to tell the Saudi diplomatic representatives of his confidential information regarding terrorism.

38. United States Magistrate Judge G. Michael Harvey held an initial appearance and removal hearing in the District of Columbia the same day. After the initial appearance and removal hearing, Mr. Kabbaj waived an identity hearing on the warrant and his right to a

preliminary hearing.

39. The Grand Jury for the District of Delaware indicted Mr. Kabbaj on March 10, 2016 for one count of Threats in Interstate Commerce (18 U.S.C. § 875 (c)) and one count of Influencing a Federal Official by Threat (18 U.S.C. §§ 115(a)(1)(B) & (b)).

40. On March 11, 2016, Judge Harvey held a full initial appearance and removal proceeding on the Indictment. Mr. Kabbaj again waived an identity hearing.

41. Upon United States' motion for detention pending removal as well as pending trial, Judge Harvey commenced a detention hearing on March 11, 2016 and concluded the hearing on March 14, 2016. Judge Harvey granted the Government's motion for detention pending removal and pending trial under 18 U.S.C. § 3142(i)(1).

42. The Marshals transported Mr. Kabbaj to Wilmington to face an initial detention hearing and eventual trial on the Grand Jury's Indictment.

43. On April 25, 2016, Chief Judge Stark of the United States District Court for the District of Delaware recused himself and the judges of his District given the language in a variety of filings and emails involving Judge Richard G. Andrews and Magistrate Judge Thynge of the District Court, and Mr. Kabbaj's claim all judges in the District of Delaware conspire against him to protect their colleagues.

44. On May 2, 2016, Chief Judge McKee of our Court of Appeals reassigned this case to me.

45. The Marshals transferred Mr. Kabbaj to the Federal Detention Center in Philadelphia although he continued to be supervised by the District of Delaware.

46. We held an initial telephone scheduling conference with Mr. Kabbaj, and the assigned attorneys from the Department of Justice and the Federal Defenders' Office. Mr.

Kabbaj consented to holding motion hearings in the Philadelphia federal courthouse solely for convenience of all parties although the trial would occur in Delaware.

47. The United States promptly moved for a psychiatric examination and mental competency evaluation for Mr. Kabbaj.

48. Awaiting arraignment, we assigned this motion to Magistrate Judge Richard A. Lloret of this District.

49. On May 24, 2016, Judge Lloret granted the psychiatric examination of Mr. Kabbaj and mental competency determination.

50. On June 10, 2016, Judge Lloret granted Mr. Kabbaj's motion for a continuance of the arraignment, for a reasonable period, to obtain an independent psychiatric examination and a mental competency determination.

51. The mental competency examination returned with findings of Mr. Kabbaj's competence.

52. On August 2, 2016, Mr. Kabbaj appeared before Judge Lloret for his arraignment and competency hearing.

53. Judge Lloret found Mr. Kabbaj competent and arraigned him.

54. At Mr. Kabbaj's request, we presided over his pretrial detention hearing, commencing on September 1, 2016 and concluding on September 8, 2016.[13]

55. Karim Kabbaj, Mr. Kabbaj's brother, testified at the pretrial detention hearing. Karim Kabbaj lives in Texas; Mr. Kabbaj's mother lives in Sunrise, Florida.

56. Karim Kabbaj states he and his mother are each willing to put up their homes as collateral for Mr. Kabbaj's release. He further states he and his mother are each willing to house and support Mr. Kabbaj if released.

57. Karim Kabbaj testified he does not believe Mr. Kabbaj will flee if released. In the opinion of Karim Kabbaj, Mr. Kabbaj does "not back down" and his problem is his "wordy" emails responding to real threats to his family from the AST and its leadership.

58. At the hearing, Mr. Kabbaj claimed he already renounced his Moroccan citizenship. Mr. Kabbaj is a citizen of the United States.

59. We granted Mr. Kabbaj's request of transfer of venue to this District upon the United States' consent.

60. Mr. Kabbaj seeks a trial date before the United States general election on November 8, 2016 fearing his AST enemies will have increased influence after the election.

61. After initially scheduling trial to begin on September 30, 2016, we moved the trial to October 17, 2016 with Mr. Kabbaj's consent to allow him more time to prepare. He assures us the October 17, 2016 trial date would work for him so long as he is released but, if detained, he will likely need more time and request a speedy trial waiver.

II. We detain Mr. Kabbaj pending trial.

62. We find Mr. Kabbaj is not a risk of flight should we release him to his brother's custody. His brother credibly promised to post his Texas home as security for Mr. Kabbaj's appearance at the October 17, 2016 trial. Mr. Kabbaj appeared at both of his earlier trials after pre-trial release. Mr. Kabbaj wants to clear his name and explain his reasons for the language in his February 18, 2016 email as charged by the Grand Jury. He seeks release to prepare for trial.

63. Given his repeated writings, we also find Mr. Kabbaj poses a substantial risk of danger to federal officials and the community should we allow him to be released to his brother's custody. Mr. Kabbaj's email incites others to avenge him by harming Chief Magistrate Judge Thynge. He argues the AST and its leadership force him to seek "holocaust" upon the

homosexual community. He speaks of decapitating Judge Thynge. We cannot, and do not, decide whether his language is based on intent or ramblings of an angry former employee believing his adversaries did better in the federal court settlement than he did.

64. We cannot conceive of pre-trial conditions on release capable of stopping Mr. Kabbaj from attempting or inciting the type of violence he admittedly describes. Home detention, computer monitoring and substantial financial risk will likely not deter him. He used similar language in communicating with Judge Swain and the Supreme Court shortly before his arrest. He calls upon others to harm. We are aware of no protection in this immediate electronic communication age to stop him from continuing to answer the perceived threats from his AST enemies.

65. His main reason for seeking release is to allow him to more meaningfully prepare his *pro se* defense to the upcoming trial.[14] If released, he expects to more easily gather documents from the court proceedings demonstrating his fear of harm to his family justifies his February 18, 2016 email.

66. We agree Mr. Kabbaj, having been approved to proceed *pro se* with experienced standby counsel, must be able to prepare for his trial. We are not aware of any authority finding pretrial release is appropriate solely to allow a defendant electing to proceed *pro se* to more meaningfully prepare his defense. To address his concerns on access to information while incarcerated, we appointed experienced and diligent standby counsel to retrieve records and coordinate discovery; required the United States to promptly produce discovery including the forensic review of Mr. Kabbaj's electronic devices; and, directed the Bureau of Prisons to provide Mr. Kabbaj with a read-only laptop to read discovery. To address any delay in Mr. Kabbaj promptly learning of any pre-trial Order while incarcerated, the Assistant United States

Attorney also volunteered to have her courier hand deliver our Orders to the Federal Detention Center every day to ensure Mr. Kabbaj sees the Orders within a day of their issuance.

III. Statement of reasons for detention

67. The Bail Reform Act of 1984 (18 U.S.C. § 3142 *et seq.*) categorizes the variations of pretrial release, "[u]pon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be[:]

> (1) released on personal recognizance or upon execution of an unsecured appearance bond, under [Section 3142(b)];
> (2) released on a condition or combination of conditions [defined by Section 3142(c)];
> (3) temporarily detained to permit revocation of conditional release, deportation, or exclusion under [Section 3142(d)]; or
> (4) detained under [Section 3142(e)]."

68. Release on personal recognizance or unsecured appearance bond, the first category, is required by Section 3142(b), "unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community." 18 U.S.C. § 3142(b).

69. We focus on the danger to the safety of other persons or the community.

70. Section 3142(e) provides for detention before trial must be ordered if the judicial officer finds by clear and convincing evidence "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community."

71. Danger to the community without a risk of flight is sufficient for a pretrial detention order.[15]

72. Section 3142(e)(2) provides "a rebuttable presumption [] that no condition or combination of conditions will reasonably assure the safety of any other person and the

community" if the court finds: the defendant has been convicted of a federal offense described in subsection (f)(1) or state equivalent while he was on release pending trial for a federal, state, or local offense and not more than five years have passed since the later of either the conviction or release for imprisonment for the conviction.[16]

73. Section 3142(e)(3) creates a rebuttable presumption "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe the person committed:

> (A) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 *et seq.*), the Controlled Substances Import and Export Act (21 U.S.C. 951 *et seq.*), or chapter 705 of title 46;
>
> (B) an offense under section 924(c), 956(a), or 2332b of this title;
>
> (C) an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed;
>
> (D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or
>
> (E) an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.[17]

74. The Grand Jury did not charge Mr. Kabbaj with any of these qualifying crimes. The rebuttable presumption due to a charge of a delineated crime does not apply.

75. In addition to, or in lieu of, a rebuttable presumption, we must apply four factors in determining whether any conditions of release will reasonably assure the appearance of the defendant and the safety of any other person and community: (1) the nature and circumstances of the offense; (2) the weight of the evidence against the defendant; (3) the history and

characteristics of the defendant; and (4) the nature and seriousness of the danger to any person or the community posed by the defendant's release.[18]

76. At Mr. Kabbaj's request, we bypassed the normal referral to a magistrate judge for a detention hearing and I held a detention hearing on September 1 and 8, 2016 to explore whether there are conditions of release to reasonably assure Mr. Kabbaj's appearance and the safety of any other person and community.

77. "A pretrial detention hearing [] is neither a discovery device for the defense nor a trial on the merits."[19] "The process that is due is only that which is required by and proportionate to the purpose of the proceeding."[20]

78. "The [Bail Reform] Act specifically permits a defendant to proceed by way of proffer, 18 U.S.C. § 3142(f), but it is silent upon the question whether the Government may do so."[21] "Every circuit to have considered the matter, however, has [] permitted the Government to proceed by way of proffer."[22]

79. "The issue in such a hearing is whether releasing a defendant would pose a danger to the community that would not exist were [the defendant] detained."[23]

80. "While the judicial officer must, in order to detain, find by 'clear and convincing evidence' that 'no conditions or combination of conditions will reasonably assure the safety of ... the community,' that finding need not rest upon evidence that would be admissible in a criminal trial."[24]

81. The United States must prove by clear and convincing evidence "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community."[25]

The nature and circumstances of the offense.

82. The Grand Jury charges Mr. Kabbaj with threatening to assault a federal official under 18 U.S.C. §§ 115(a)(1)(B) & (b) and making threats in interstate commerce under § 18 U.S.C. § 875(c). Mr. Kabbaj's offense is a crime of violence, because the United States will have to prove he threatened assault or murder for his § 115(a)(1)(B) & (b) charge.

83. Mr. Kabbaj proffers the nature and circumstances of the offense arise from a decades-long conspiracy against him perpetrated by the American School of Tangiers and "the hierarchy of the global LGBTQIA+[26] religion" by whom the AST's leadership is comprised.[27] Under his conspiracy theory, the AST is a proxy of the United States Government. Mr. Kabbaj claims AST's former headmaster attempted to molest him as a student. Mr. Kabbaj proffers he then blew the whistle on the headmaster, beginning this conspiracy against him. Mr. Kabbaj characterizes the conspiracy as a cycle of malicious prosecution. The cycle begins with AST's defamation against Mr. Kabbaj, leading him to retaliate with what he refers to as "threats" against the AST and those he views to be AST "agents." The cycle ends with AST initiating criminal or civil prosecution against him and he successfully defends all charges.

84. This conspiracy may be proven in some proceeding. But this is not our issue today. Mr. Kabbaj admits sending the February 18, 2016 email and all of the writings evidencing his state of mind.

85. The nature and circumstances of the offenses allegedly committed by Mr. Kabbaj are dangerous to the individuals to whom they are addressed and the community at large. The nature of the offenses is violent. Mr. Kabbaj's statements describe actions either he wishes to take or will incite others, directly and indirectly, to complete. The circumstances surrounding

the issuance of the statements are dangerous if only because Mr. Kabbaj invokes appeals to terrorism and religious struggle.

The weight of the evidence against Mr. Kabbaj.

86. The United States, at trial, needs to prove Mr. Kabbaj's guilt beyond a reasonable doubt under § 115: (1) Mr. Kabbaj threatened to assault or murder; (2) a Federal Judge; (3) with the intent to impede, intimidate, interfere with, or retaliate against the judge on account of her performance of official duties.[28]

87. "Direct communication to the person threatened is not required for a conviction under the statute."[29]

88. For a conviction under §875(c), the communication must have been made "for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat."[30]

89. Mr. Kabbaj's February 18, 2016 email speaks of hospitalization and decapitation. The email is directed to Chief Magistrate Judge Mary Pat Thynge, law enforcement officials, lawyers, and others. Mr. Kabbaj fails to proffer anything in his favor as to this factor. Mr. Kabbaj admits sending the February 18, 2016 email. He claims he sent "hundreds" of other similar emails. Kabbaj views his statements as justified and does not hesitate to admit issuing them.

90. Rather, his defense is based on a covenant in the 2012 settlement agreement with AST before Magistrate Judge Thynge. Mr. Kabbaj claims the Indictment is impermissible absent his consent. Mr. Kabbaj argues the 2012 settlement bars the United States from initiating charges against him, characterizing the AST as the United States government.

91. The evidence weighs heavily against Mr. Kabbaj. He admits sending the February 18, 2016 email. His written statements speak for themselves. Mr. Kabbaj admits to issuing the statements and characterizes them as "threats" himself.

92. His defenses of justification, coercion, necessity and entrapment may not succeed but the jury will also need to consider whether his statements are protected by the First Amendment under the Supreme Court's ruling in *Elonis v. United States*, 135 S. Ct. 2001 (2015). In *Elonis*, the defendant posted rap lyrics to his social media accounts containing "graphic language and imagery concerning his wife, co-workers, a kindergarten class, and state and federal law enforcement."[31] Judge Stengel instructed the jury to find the defendant guilty if "a reasonable person would foresee that his statements would be interpreted" as a threat.[32] The defendant challenged this jury instruction arguing the United States must prove he intended to communicate a "true threat."[33] Our Court of Appeals affirmed Judge Stengel's instruction. The Supreme Court reversed finding § 875(c), without expressly saying so, required a mental state greater than negligence. "[T]he crucial element separating legal innocence from wrongful conduct is the threatening nature of the communication" and allowing negligence to be the proper standard would impermissibly allow "criminal liability" to "turn on solely the results of an act without considering the defendant's mental state."[34] Instead, the Supreme Court held the United States must prove a defendant transmitted "a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat."[35] However, the Court did not address "any First Amendment issues."[36]

93. The substantial weight of the evidence, given Mr. Kabbaj's admission, warrants detention. This is not a weak case. Mr. Kabbaj has a defense but the United States has

substantial evidence, including the proffered testimony of Judge Thynge concerning the severely harmful and continuing effects of Mr. Kabbaj's statements upon her.

Mr. Kabbaj's history and characteristics.

94. Mr. Kabbaj has a 1997 felony conviction for conspiracy to distribute heroin. He is unemployed and has no contacts in Delaware or this District. Mr. Kabbaj admitted during his detention hearing before Magistrate Judge G. Michael Harvey a medical professional diagnosed him with schizophrenia in or around 2001-2003. Mr. Kabbaj claims the medical professional erred.

95. Mr. Kabbaj cites the availability of bail for his 1997 felony conviction to proffer his fitness for release today. In 1997, Mr. Kabbaj claims the court released him on a $150,000 recognizance bond. Mr. Kabbaj also cites to the discrepancy between the 40-year maximum sentence he faced in the drug conspiracy case and the six year maximum sentence he faces today. His logic is if a judge released him in a case carrying a higher maximum sentence, then a judge should release him in a case carrying a lower maximum sentence. Mr. Kabbaj does not mention the absence of prior criminal history in 1997 or address his present criminal history arising from his 1997 conviction.

96. Mr. Kabbaj proffers after his release from prison in 1998, he enrolled in college by the summer of 1999 where he worked hard (taking double-credit loads) to complete a dual-major Bachelors degree in Psychology and Media Studies by Summer 2001 from Queens College CUNY. Mr. Kabbaj's mother verified he graduated with degrees from Queens College in 2001.

97. Police in Sunrise, Florida arrested Mr. Kabbaj in 2005 and charged him with trespassing and battery-touch or strike. Mr. Kabbaj successfully defended the charges in 2006.

Mr. Kabbaj's last and only other arrest is this case. Although Mr. Kabbaj has a limited criminal history, the accusations of his prior arrests are of serious crimes. The seriousness of the charges Mr. Kabbaj faces here and the seriousness of his statements, militate against release.

98. Mr. Kabbaj has no ties to this District. He has a passport and has traveled and lived abroad. Mr. Kabbaj has significant family ties to Morocco. He lived in Florida for six years where he has moderate familial ties to his mother but no residential, financial, or employment ties. Mr. Kabbaj reports a dated history of substance abuse.

99. As noted above, a medical professional diagnosed Mr. Kabbaj as schizophrenic. He thinks courts act maliciously against him by virtue of not ruling in his favor. The list of persons conspiring against him grows every time something does not go his way. Mr. Kabbaj feels compelled to issue what he refers to as "threats" to those he sees as conspiring against him.

100. Mr. Kabbaj's history shows his current characteristics have been his past characteristics. We have no reason to believe his characteristics will change for the better if he is released. This presents a dangerous likelihood Mr. Kabbaj will not cease to incite others to act even if he cannot carry out the actions described in his statements. His anger arises from perceived threats made against him and his family by his enemies and adverse court rulings. We have no reason to believe any of this conduct will stop if we release Mr. Kabbaj to his brother's custody.

The nature and seriousness of the danger to any person or the community posed by Mr. Kabbaj's release.

101. Mr. Kabbaj's belief in a global conspiracy aimed against him endures. He expresses no remorse for issuing the statements in his February 18, 2016 email. He stands by them as justified and necessary for himself, his family and the community. Given Mr. Kabbaj feels compelled to issue such statements for the sake of him and others, there is no reason to

believe he will not continue to do so if released. His words are too serious and dangerous to risk allowing the issuance of such statements to continue. His words are intended to incite others to act. Thus, even if we were to have a 24 hour monitor of him, we remain concerned about his ability to motivate others, including the "female hackers" to avenge him by harming Judge Thynge.

102. Mr. Kabbaj traveled outside of the United States several times and has lived in Morocco and claims to have family there. Mr. Kabbaj claims his Morocco family includes several high-ranking generals and one of which is a bodyguard to the King of Morocco. He claims to be a descendant of the King of Morocco and ties to the Mafia and foreign intelligence agencies. We do not mention these facts to show he is a flight risk. We do not view him as a flight risk. Mr. Kabbaj renounced his Moroccan citizenship and we find no history of him fleeing from court proceedings. Karim Kabbaj testified at the hearing Mr. Kabbaj will not flee because he does not back down.

103. We cite his purported connections in Morocco and the Mafia to support our concern of others acting on his behalf. Statements contained in Mr. Kabbaj's February 18, 2016 email may incite others to act. Those statements call on Muslim women at-large and allude to some Muslim women being directly under Mr. Kabbaj's control. The statements speak of and may incite violence by Muslims and allege a conspiracy against Islam.

104. Even if possible for us to condition the release of Mr. Kabbaj so he cannot issue statements through the internet, there is no way for us to be certain Mr. Kabbaj cannot use alternative mediums or means to incite others to dangerous action. Mr. Kabbaj has repeatedly warned he will not obey federal court orders, although he assured us he would strictly follow our order releasing him with strict conditions. We find little comfort in his promises of compliance

with our Orders. His recent past is highlighted by several steps violating court orders in the civil cases against AST and its leadership. When he disagrees with federal judges, he calls for violence and warns of large-scale harm to the community. If Mr. Kabbaj is released, there is a substantial risk of danger he will attempt to cause others harm or impermissibly influence the outcome of his case through his own actions or inciting others to act. He repeatedly promises to do so.

105. The actions potentially incited by Mr. Kabbaj's statements are dangerous: decapitation, terrorism, religious warfare, and widespread violence. Mr. Kabbaj's determination to continue making such statements makes him too dangerous to the persons he directs his statements to and the community at large to release.

IV. Conclusion

The great weight of the present facts found after evaluating witnesses and evidence at our extended detention hearing weigh in favor of the short term pre-trial detention pending the October 17, 2016 trial. Based on his admitted words, releasing Mr. Kabbaj would pose a danger to the community not existing where he detained.[37] We find by clear and convincing evidence no condition or combination of conditions will reasonably assure safety of other persons and the community. We order Mr. Kabbaj detained pending our October 17, 2016 trial in the accompanying Order.

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[1] *See United States v. Salerno*, 481 U.S. 739, 750-751 (1987).

[2] The AST leadership, according to Mr. Kabbaj, "is comprised of numerous high-ranking U.S. Federal Officials (from the CIA, Department of State, and the Democratic political party), Moroccan Government Officials (including high-ranking members of the Royal Family), media officials from Hollywood and other dignitaries, artist, etc." ECF Doc. No. 97.

[3] As Mr. Kabbaj defines it: "Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and +other yet to be 'discovered' and/or defined [orientations]." ECF Doc. No. 97.

[4] Mr. Kabbaj points to three cases which "best summarize the foundational events of this dispute[:] [Eastern District of New York] Case No. 96-cr-205 (Dkt. #45), [Eastern District of New York] Case No. 15-cv-291 (Dkt. #9), [and] [Southern District of Florida Case] No. 11-23492 (Dkt. #1)." ECF Doc. No. 97.

[5] ECF Doc. No. 4, ¶ 7.

[6] *Id.*, ¶2.

[7] *Id.*

[8] Mr. Kabbaj misspelled Judge Thynge's email address as "judge_mary_pat_thygne."

[9] Mr. Kabbaj copied FBI agent Perry Cuocci and FBI Director James Comey on the February 18, 2016 email. We have no basis to believe Mr. Kabbaj threatened either of these FBI officials.

[10] Mark Simpson is AST's present headmaster. Brian Albro is Mark Simpson's relationship partner. Both live in New York City.

[11] ECF Doc. No. 4, ¶ 6.

[12] *Id.*

[13] Mr. Kabbaj requested a continuance to obtain one more witness.

[14] We appointed the highly qualified Federal Public Defender to represent Mr. Kabbaj. Mr. Kabbaj refused this representation and moved to proceed *pro se.* Judge Lloret granted his request but appointed experienced federal criminal counsel to assist.

[15] *United States v. Perry,* 788 F. 2d 106, 113 (3d Cir. 1986).

[16] 18 U.S.C. § 3142(e)(2).

[17] 18 U.S.C. § 3142(e)(3).

[18]18 U.S.C § 3142(g).

[19] *United States v. Smith*, 79 F.3d 1208, 1210 (D.C. Cir. 1996).

[20] *Id.*

[21] *Id.*

[22] *Id. See also United States v. Gaviria,* 828 F.2d 667, 669 (11th Cir. 1987); *United States v. Martir,* 782 F.2d 1141, 1145 (2d Cir.1986); *United States v. Winsor,* 785 F.2d 755, 756 (9th Cir. 1986); *United States v. Acevedo-Ramos,* 755 F.2d 203, 206-07 (1st Cir. 1985).

[23] *United States v. Rodriguez*, 897 F. Supp. 1461, 1463 (S.D. Fla. 1995) (*citing United States v. Phillips*, 732 F. Supp. 255, 267 (D.Mass. 1990), *reh'g denied*, 952 F.2d 591 (1st Cir.), *cert. denied*, 113 S.Ct. 113 (1992)); *see also United States v. Smith*, 79 F.3d 1208, 1209 (D.C.Cir.1996) (per curiam); *United States v. Portes*, 786 F.2d 758 (7th Cir. 1985); *United States v. Orta*, 760 F.2d 887 (8th Cir. 1985).

[24] *Perry*, 788 F.2d 100, 106.

[25] *Id.* at 114-15.

[26] As Mr. Kabbaj defines it: "Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and +other yet to be 'discovered' and/or defined [orientations]." ECF Doc. No. 97.

[27] The AST leadership, according to Mr. Kabbaj, "is comprised of numerous high-ranking U.S. Federal Officials (from the CIA, Department of State, and the Democratic political party), Moroccan Government Officials (including high-ranking members of the Royal Family), media officials from Hollywood and other dignitaries, artist, etc." ECF Doc. No. 97.

[28] *United States v. D'Amario*, 330 F. App'x 409, 412 (3d Cir. 2009).

[29] *D'Amario v. United States*, 403 F. Supp. 2d 361, 378 (D.N.J. 2005) (citing *United States v. Martin*, 163 F.3d 1212, 1216 (10th Cir. 1998); *United States v. Snelenberger*, 24 F.3d 799, 803 (6th Cir. 1994)).

[30] *Elonis v. United States*, 135 S. Ct. 2001, 2012 (2015). The United States focuses on the effect of the alleged threats upon Judge Thynge, who did view the communication as a threat and continues to fear for her safety. More than Judge Thygne's view is required in light of *Elonis*, but the United States has proffered the weight-of-the-evidence factor to meet its present burden.

[31] 135 S.Ct. at 2002.

[32] *Id.* at 2007.

[33] *Id.*

[34] *Id.* at 2011-12.

[35] *Id.* at 2012.

[36] *Id.*

[37] *See Rodriguez*, 897 F. Supp. at 1463.